IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B. CIVIL WRIT PETITION No.3122/1999
VISHAVAKARMA TRADE ASSOCIATION (RIICO AREA)
V/s
STATE OF RAJASHAN & OTHERS

DATE OF ORDER ::: 5th APRIL,2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri M.P. Rathi for petitioner.
Shri Virendra Lodha for respondents No.2&3.
Shri H.V. Nandwana, Deputy Government Advocate for State.

This writ petition has been filed by Vishavakarma Trade Association (RIICO Area), Jaipur against the order dated 9.2.99 whereby their representation against increase in the rent of the shops let out to its members was conveyed and further against the notices dated 21.5.98 and 3.9.98 (Annex 15 and 16) used to one of its members

with the prayer that the same may be quashed and set aside and further that the action of the respondent No.2 in enhancing monthly rent from Rs.188/- to Rs.576/- may be declared illegal and without jurisdiction.

I have heard Shri M.P. Rathi, learned counsel for the petitioner, Shri Virendra Lodha, learned counsel for the respondents No. 2 and 3 and Shri H.V. Nandwana, learned Deputy Government Advocate.

Shri M.P. Rathi, learned counsel for the petitioner argued that while, on one hand, the RIICO increased the amount of rent, on the other hand, it has not been able to provide basic facilities of urinals, latrines, drinking water and lighting arrangements in commercial complexes and shopping areas. The petitioner-association submitted various representations on 3.1.98, 13.2.98, 10.4.98, 17.6.98, 29.7.98,

3.9.98 and 15.12.98 for providing these amenities and removing the tharies and unauthorised occupants from the road side and other places of the areas. In fact, in the representation dated 10.4.98, the petitioner submitted that enhancement of monthly rent of shops from Rs.188/- per month to Rs.576/- per month was arbitrarily and increase in the amount of lease money/development charges upto Rs.1000/-, was contrary to the written agreement between the parties. Lastly, the petitioner served a legal notice for demand of justice but when nothing happened, they had to file the present writ petition. The learned counsel therefore prayed that the writ petition be allowed in terms of the prayers contained therein.

Shri Virendra Lodha learned counsel for contesting the respondents opposed the writ

petition and argued that the terms and conditions for allotment of shops were agreed upon between the parties in the written agreement which is Annexure 14. Clause 11(a) of the agreement clearly provides that at the time of initial agreement the amount of rent would be Rs.150/- per month which shall be increased by the corporation at its discretion and such increased rent shall then be payable by the tenant. He denied that the RIICO has not provided the amenities and other infrastructure. He also argued that the encroachments have been removed. According to Shri V. Lodha, this is essentially a contractual dispute and writ petition is an appropriate remedy for adjudication of this contractual between the parties which involves several disputed questions of facts. He, therefore, prayed that the writ

petition be dismissed.

Agreement between the parties clearly stipulated the agreed amount of Rs.150/- per month as rent of the hired premises or such amount as shall be decided by the Corporation. This amount of Rs.150/- per month appears to have been increased later to Rs.188/- per month and now this has been increased to Rs.576/- per month. While the petitioner asserts that the other basic amenities enumerated above have not been provided, the respondents contest the matter. Adjudication of such dispute that can possibly be not made in writ jurisdiction under Article 226. The petitioner has to establish on facts on which of the conditions of the agreement is violated and that it can be only before a Civil Court, where evidence can be recorded for resolving the controversy

involving the disputed question of facts. Even otherwise, it is not found that the agreement which was initially entered between the parties was as per clause 5 thereof only for a period of three years. Whether or not it was later renewed by another term or whether the respondents had agreed to extend the lease term is again a matter of fact.

In my considered view, no relief whatsoever can be granted to the petitioner in the remedy of writ although it would be free to avail its remedy in the Civil Court. I do not find any merit in the writ petition and the same is dismissed with the aforesaid observations.

(Mohammad Rafiq),J.

Chauhan/